



January 3, 2002

Ms. Susan A. Bowen
Assistant Criminal District Attorney
Civil Section
Bexar County
300 Dolorosa, 5th Floor
San Antonio, Texas 78205-3030

OR2002-0043

Dear Ms. Bowen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156801.

The Bexar County Sheriff's Office (the "sheriff's office") received a request for copies of information pertaining to a specified investigation. You claim that the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that the submitted information is excepted from disclosure in its entirety pursuant to section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted . . . if:

....

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that *did* not result in conviction or deferred adjudication;

Gov't Code § 552.108(a)(2) (emphasis added). Generally, a governmental body claiming section 552.108(a)(2) as an exception to disclosure must demonstrate that the information relates to a criminal investigation that has concluded in a final result other than a conviction

or deferred adjudication. *See* Gov't Code §§ 552.108(a), (b), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information "deal[s] with the detection and investigation of crime that has not resulted in a conviction or deferred adjudication" and that this "continuing felony criminal investigation is ongoing . . ." Based on your representations and our review of the submitted information, we find that you have not established that this case concluded in a final result other than conviction or deferred adjudication. Accordingly, the submitted information is not excepted from disclosure pursuant to section 552.108(a)(2) of the Government Code.

You claim that a portion of the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.¹ We note that criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. *See* Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *See id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). The definition of CHRI does not include driving history record information maintained by the department under Subchapter C of Chapter 521 of the Transportation Code. Furthermore, where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Accordingly, the sheriff's office must withhold from disclosure any CHRI that may exist within the submitted information pursuant to section 552.101 of the Government Code. *See id.*; *see also* Gov't Code § 411.106(b), .082(2) (defining criminal history record information).

We note that the submitted information contains a W-4 form. Section 6103(a) of title 26 of the United States Code provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Open Records Decision No. 600 (1992); Attorney General Op. MW-372 (1981). Accordingly, the sheriff's office must withhold from disclosure the W-4 form that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

We also note that the submitted information contains an Employment Eligibility Verification, Form I-9. Form I-9 is governed by title 8, section 1324a of the United States Code, which provides that an I-9 form "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Release of this document in this instance would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that the marked Form I-9 is confidential and may only be released in compliance with the federal laws and regulations governing the employment verification system.

We also note that the submitted information contains social security numbers of persons other than the deceased. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the sheriff's office to obtain or maintain these social security numbers. Therefore, we have no basis for concluding that the social security numbers are confidential pursuant to section 405(c)(2)(C)(viii)(I) of Title 42 of the United States Code. We caution the sheriff's office, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers at issue, you should ensure that the numbers were not obtained or are maintained by the sheriff's office pursuant to any provision of law enacted on or after October 1, 1990.

We also note that the submitted information contains Texas motor vehicle information of persons other than the deceased. Section 552.130 of the Government Code excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Accordingly, we conclude that the sheriff's office must withhold from disclosure the Texas motor vehicle information that we have marked pursuant to section 552.130 of the Government Code.

Finally, we note that the submitted information contains account numbers that are subject to section 552.136 of the Government Code. The Seventy-seventh Legislature recently added section 552.136 to the Public Information Act which makes certain access device numbers confidential. Senate Bill 694 was passed on May 14, 2001, became effective when it was signed by the Governor on May 26, 2001, and provides, in relevant part, as follows:

**Sec. 552.136. CONFIDENTIALITY OF CREDIT CARD, DEBIT CARD,
CHARGE CARD, AND ACCESS DEVICE NUMBERS.**

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Act of May 14, 2001, 77th Leg., R.S., S.B. 694, § 1 (to be codified at Gov't Code § 552.136). Accordingly, the sheriff's office must withhold from disclosure the account numbers that we have marked pursuant to section 552.136 of the Government Code.

In summary, the sheriff's office must withhold from disclosure any CHRI that may exist within the submitted information pursuant to section 552.101 of the Government Code. The sheriff's office must withhold from disclosure the W-4 form that we have marked pursuant to section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code. The Form I-9 that we have marked is confidential and may only be released by the sheriff's office in compliance with federal laws and regulations governing the employment verification system. The social security numbers of persons other than the deceased that are contained within the submitted information may be confidential pursuant to federal law. The sheriff's office must withhold from disclosure the Texas motor vehicle information that we have marked pursuant to section 552.130 of the Government Code. The sheriff's office must withhold from disclosure the account numbers that we have marked pursuant to section 552.136 of the Government Code. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

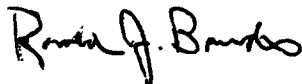
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 156801

Enc. Marked documents

cc: Mr. Alan D. Tysinger
Miller & Henderson
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(w/o enclosures)